

FALCON LAW FIRM, LLC

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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

DIANNE COCHRAN

: CIVIL ACTION

: NO: 20-4997

v.

ULTA BEAUTY INC., et al

:

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION IN
LIMINE TO PRECLUDE IMPROPER TESTIMONY FROM PLAINTIFF'S
EXPERT JOHN YANNAcone PE**

Defendant's Motion in Limine to Preclude the expert testimony of John Yannacone should be denied. Defendant's argument is essentially that since Mr. Yannacone's opinions assume that the incident occurred his testimony must be precluded. First, clearly experts do this in essentially every case where there is a dispute of facts and experts are certainly permitted to do so as experts may testify based upon hypothetical questions and may adopt a version of facts which they find more believable and credible. Indeed, Defendant's position that the incident did not occur is not credible. Defendant's own manager signed an incident report on which she states that the incident was not questionable. Defendant's manager also signed an incident report completed by Plaintiff on which she detailed the factual events of the endcap falling upon her. She thereafter at the arbitration attempted to state that she signed the form (after denying that she had signed the form at all at her deposition), before Plaintiff had written the factual version of what happened on the form although she never testified to this at her deposition. Plaintiff was aware that there were cameras inside the Ulta store so it would be highly incredible that Plaintiff would attempt to commit a fraud by stating an endcap fell upon her knowing that there was video surveillance in the store. At any

rate, Defendant presents no valid reason to preclude the testimony of Mr. Yannacone and any of Defendant's arguments are simply matters for cross examination.

WHEREFORE, Plaintiff respectfully requests that Defendant's Motion in Limine be denied.

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